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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,096	02/27/2004	Niranjan Patel	2004-310	7680

7590 10/31/2007

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 10/31/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/789,096

74  
Applicant(s)

PATEL, NIRANJAN

Examiner

Leo T. Hinze

Art Unit

2854

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 31 May 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

  
**JUDY NGUYEN**  
SUPERVISORY PATENT EXAMINER

Continuation of 10. Other (including any explanation in support of the above items): The Summary of Claimed Subject Matter (as required by MPEP §1205.02(v)) refers to claims contained in the non-entered After Final Amendment filed 22 November 2006, which claims are not on appeal. The Summary should instead refer to the claims contained in the Amendment filed 07 July 2006, which claims are on appeal. The Appellant argues in Section (iv) and the Closing Remarks that it is not clear whether the non-entered After Final Amendment filed 22 November 2006 was entered for purposes of appeal. The Appellant's arguments are unpersuasive. A Notification of Non-Compliant Appeal Brief mailed 02 May 2007 indicates that the proposed Amendment received 22 November 2006 was not entered for purposes of Appeal. Additionally, though neither Box 7a or 7b was checked on the Advisory Action mailed 20 December 2006, there should be no confusion about whether the amendment was entered for purposes of appeal for the following reasons: 1) if the examiner chooses to enter a non-entered After Final Amendment for the purposes of appeal, box b) also requires an explanation of how the new or amended claims would be rejected. No such explanation of how the amended claims would be rejected was included with the Advisory Action; and 2) an indication in Box 3 of non-entry due to new issues that require further search and consideration is a signal that in the examiner's opinion, the proposed amendment changes the scope of the claims. As such, an appeal of the claims as contained in the proposed amendment would be premature, as the record would not include the examiner's treatment of the newly amended claims. The examiner suggests that if a similar situation arises in the future, where it is not clear whether a non-entered After Final amendment was entered for purposes of appeal, a phone call to the examiner may provide verbal confirmation of the status of the amendment, or cause the examiner to issue a separate Advisory Action clarifying the status of the After Final amendment.